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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206280

DATE: February 19, 1982

MATTER OF: J&R Cleaning and General Maintenance

DIGEST:

1. No basis exists to preclude a contract award merely because the low bidder may have submitted a below-cost bid.
2. GAO will not review affirmative determination of responsibility except in limited circumstances.
3. Violations of the Service Contract Act during contract performance are the responsibility of the Department of Labor, not GAO.

J&R Cleaning and General Maintenance (J&R) protests the award of a contract by the General Services Administration, Region 9, to Ace Building Maintenance (Ace). The contract, awarded under solicitation No. IFB-PBS-9PPB-81-0132, is for building maintenance services and supplies. J&R believes that Ace's bid price is too low to provide all the requested supplies and equipment and to allow for compliance with certain wage determinations of the Department of Labor under the Service Contract Act, 41 U.S.C. § 351 et seq. (1976).

The submission of a below-cost bid, however, is not a valid basis upon which to challenge an award. Virginia Manufacturing Company, B-202393, July 9, 1981, 81-2 CPD 25. Rather, the question is whether the bidder can perform the contract at its bid price, a question which relates to a bidder's responsibility. Condor Industries, Inc., B-203545, October 21, 1981, 81-2 CPD 326. This Office does not review a contracting officer's affirmative determination of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation have not been met. Nedlog Company, B-204557, September 21, 1981, 81-2 CPD 235. J&R does not allege either exception here.

In addition, should Ace violate the Service Contract Act during the performance of the contract, that violation is a matter for the Department of Labor, not this Office, since the Department of Labor is responsible for administration and enforcement of the Act, NonPublic Educational Services, Inc., B-204008, July 30, 1981, 81-2 CPD 69.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel